

(1) **When are the amended Guidelines effective?**

June 26, 2006

(2) **Where can I view the amended Guidelines?**

You can view the complete text of the rules on the Internet at: <http://www.tn.gov/sos/rules/1240/1240.htm>

(3) **Is there an automated calculator available to assist in quickly determining support obligations under the amended Guidelines?**

Yes! A free automated calculator is available. The calculator dramatically decreases the time it takes to determine child support orders as opposed to figuring the calculations by hand (from approximately 25 minutes to two minutes to calculate an order once the fields are filled in

(4) **What cases will use the amended Guidelines?**

The amended Guidelines apply to all child support cases whether the action is filed before or after the effective date of the rules, where a hearing that results in an order establishing, modifying, or enforcing support is held on or after the effective date of the rules. [One exception is where a case has been on appeal to an appellate level court, such as the Tennessee Court of Appeals, and is remanded with instructions to calculate using the Guidelines in effect at some other date.] Modifications of existing orders must comply with the requirements of the amended Guidelines.

(5) **Will the amended Guidelines automatically be applied to my case?**

The amended Guidelines will be applied to all child support cases where a new or modified order results from a hearing held on or after the effective date; however, there is no “automatic” change to any child support order. One of the parties to the case will have to request action from the court with jurisdiction of the support order or from the Department’s Child Support Office. This can be done by:

1) requesting a “Review and Adjustment” from the local child support office for your county if you are currently receiving child support services, or if you apply for child support services. The Department of Human Services will conduct the review and determine if the “significant variance” rule or other rules for modification of the existing order are met, and will either seek a court order to modify the existing order or issue an administrative order modifying the support amount to make the modification; or

2) filing a court action through your private lawyer or on your own. The same rules apply in this circumstance.

Families First (the name for Tennessee’s version of the federal Temporary Assistance to Needy Families [TANF] program) cases that are active are reviewed by the Department at least every three (3) years, without request of the parties. The amended Guidelines will apply to those three (3) year reviews that occur on or after

the effective date of the new Guidelines.

NOTE: If the Department determines at the time you request services that you owe back child support, the Department will seek to collect the unpaid child support by court order, or by administrative action by the Department such as income tax refund intercepts; attachment of financial assets, workers compensation, or unemployment benefits; suspension of drivers, business, trade, or professional licenses; or any other available means of collection.

**(6) How are credits for my other children calculated?**

The amended Guidelines modify the procedure for giving credit against gross income for the other children of either the Mother or the Father, provided the qualifications for credit are met. To be able to receive credit for the other children, the parent claiming the credit must have a legal duty to support the child and, in fact, actually support the child, either in the parent's home or by monetary support. In the amended Guidelines, these are referred to as "qualified other children." Credit is available for all qualified other children, whether the children reside in the parent's home, or in some other home, and whether the children are supported by the parent voluntarily, under a pre-existing child support order or under a subsequent child support order. This is a change from the original Income Shares Guidelines that were effective beginning January 18, 2005, that required credit for children supported under pre-existing orders be calculated separately from a parents qualified other "not-in-home" children.

**(A) Theoretical Orders**

A "theoretical" order (also called a "dummy" order) is an order calculated for the purposes of determining the amount of credit against gross income allowed for support provided to the parent's qualified other children, prior to calculating the support under the order being considered. Using the income of the parent claiming the credit (minus self-employment taxes), the number of children in the situation (whether living primarily with the parent seeking credit or living somewhere else), and the Child Support Schedule, the amount of support a parent would pay for these children is determined. This amount is referred to as the "theoretical order amount." The theoretical order is subject to the existing statutory threshold on child support obligations for high income parents which, absent deviation, limits the amount of support to two thousand one hundred dollars (\$2,100) for one (1) child and up to five thousand dollars (\$5,000) for five (5) or more children. The maximum credit is 75% of the theoretical order amount.

**(B) Children Living 50% or More of the Time in the Home of the Parent Claiming Credit**

If either Mother or Father have a child from another relationship, are legally obligated to support that child, and the child lives with the parent 50% or more of the time, the parent may deduct from gross income seventy-five percent (75%) of the amount of a theoretical order up to the amount of the statutory cap described above. When children are living in the parent's home, there is an assumption that the parent is supporting the child. Unless proven otherwise, therefore, no other proof of support is necessary. The parent claiming the credit must prove the legal duty of support and that the child lives with the parent 50% or more of the time.

**(C) Children Living Less Than 50% of the Time in the Home of the Parent Claiming the Credit**

If either Father and Mother have a child from another relationship, are legally obligated to support that child, are actually supporting that child, and the child lives with the parent claiming the credit less than 50% of the time, the parent may deduct from gross income a credit for the average monthly support actually provided for that qualified other child up to 75% of a theoretical support order, limited also by the amount of the statutory cap described above, whichever is less. For example, if the theoretical order is \$500.00 per month (75% of that being \$375.00), but the actual average payment for the prior twelve (12) months is only \$300.00, then the maximum allowable credit is \$300.00. The amount of the credit is not based on whether the qualified other child was born before or after the child born to the Mother and Father, or on whether the qualified other child is supported voluntarily, supported under a pre-existing support order, or a subsequent support order.

The parent claiming the credit must prove the legal duty of support and monetary payments to the child's primary caretaker over the most recent twelve (12) months. Evidence of "in kind" remuneration, such as food, clothing, diapers or formula, can be used for this credit so long as the "in kind" remuneration has been reduced to a monetary amount approved by the court in the qualified other child's case or affirmed by the receiving parent in the other case.

#### **(7) How does the Parenting Time Adjustment operate?**

Under the amended Guidelines, the number of "days", or the average number of "days" if there is more than one (1) child involved, the children stay with the Alternate Residential Parent (ARP) determines whether the ARP is eligible for a Parenting Time Adjustment. A "day" is now defined as more than twelve (12) hours of a twenty-four (24) hour period. This is a change from the prior rule that had defined a "day" as the majority of a twenty-four (24) hour calendar day. This new definition includes either a daytime period, or an overnight period.

For example – The majority of a twenty-four hour period could include from 8 o'clock Saturday morning to 8:15 Saturday evening or from after school on Wednesday afternoon to start of school Thursday morning. If the average number of days an ARP spends with the children equal ninety-two (92) or more in a year, or sixty-eight (68) or less in a year, then the Parenting Time Adjustment may be applied. This is a change from the prior rule that had set the adjustment thresholds as one hundred twenty-one (121) or more days per calendar year or fifty-three (53) or fewer days per calendar year. Either parent may present evidence to rebut the presumption that the adjustment should be applied in a particular situation.

If the ARP spends sixty-eight (68) days or less in a year with the children, the ARP's share of the BCSO is increased by a per diem amount based on the number of days fewer than sixty-nine (69) the ARP spends with the child  $[(69 - \text{No. of days}) / \text{three hundred sixty-five (365)} \times \text{the ARP's share of the BCSO}] + \text{the ARP's share of the support obligation}$ .

If the ARP spends ninety-two (92) days or more in a year, a multiplier of .0109589  $[2 / 182.5]$  is multiplied by the ARP's parenting time, creating a variable multiplier. The variable multiplier is then applied to the BCSO to obtain an amount representing the ARP's child rearing expenses. The PRP's pro-rata share of the ARP's expenses is subtracted from the ARP's share of the BCSO, giving the ARP a credit for the additional

parenting time.

In split parenting situations, only the days the parent spends with the children for whom that parent is the ARP are counted for the adjustment. In fifty-fifty / equal parenting situations, a formula is applied that allows the adjustment to apply in an equitable manner.

**(8) How are my child's medical insurance costs and work-related childcare costs calculated?**

Under the Income Shares model, the actual cost of the child's health insurance premiums (medical and dental), uninsured medical expenses, and work-related childcare are included in the calculation of the support order. The actual expenses are divided according to each parent's percentage of their combined income and accounted for in each parent's share of the Support Obligation.

**(9) How do educational expenses and special expenses come into consideration?**

After calculating a BCSO, adjusting for parenting time, as appropriate, and adding health insurance cost, uninsured medical expenses, and work-related childcare expenses, educational expenses for private or special schooling for children can be considered as a deviation from the presumed amount of support. Expenses for such things as music lessons, camps, travel, and other activities that may contribute to the child's cultural, social, artistic or athletic development (Special Expenses) may also be considered by the court as deviations from the presumptive child support order. Such Special Expenses must exceed percent (7%) of the Basic Child Support Obligation before they are considered, unless the parties agree otherwise. If a deviation is made, the court must include in the order the reasons for the deviation and the amount the order would have been without the deviation.

**(10) My former spouse and I have equal time with our children. How do the amended Guidelines treat parents with equal time?**

If each parent has exactly fifty percent (50%) of the time with a child, the parents must still complete a child support worksheet, indicating 182.5 days with the child for each parent. This is the only time a fraction of a day may be used under Income Shares. Complete the worksheet in the same manner as for any child support case, including any other children in the case on the same worksheet.

There will be a child support obligation for children who spend exactly equal time with each parent unless both parents have exactly the same income and expenses for the child.

**(11) I pay state taxes in another state. Do I get to deduct those taxes from gross income?**

No, the Rules do not provide a deduction for the taxes of another state.

**(12) How do you calculate arrears under the amended Guidelines?**

Arrears accrue when support is not paid as ordered, whether it was ordered under the previous flat percentage guideline system or an income shares guideline system. Put in the simplest terms, to calculate arrears, consult the support order for the amount of the payment due and the frequency of the payment. Count the number of payments that were due from the date of the order forward to the present and multiply by the order amount. If there has been an arrearage judgment earlier in the case, count the number of payments due from the judgment date forward, and add the judgment amount to the amount due. That is the amount of support that should have been paid. Compare the amount that should have been paid to the amount of support that was actually paid in the same period. The difference is the arrearage.

**(13) When do you impute income?**

Income may be imputed when:

- A) there is no reliable evidence of income; or
- B) a parent is willfully and voluntarily unemployed or underemployed; or
- C) when a parent has non income producing assets.

Income is not automatically imputed to a parent due to a particular situation. The decision must be made on a case by case basis. Willful and voluntary unemployment or underemployment is not assumed in any particular situation. The parent's intentional decisions and circumstances must be examined. For example, there are many possible reasons for a parent to stay at home. If a parent stays at home to take care of children because the cost of childcare would be more than any job the parent is skilled to perform would pay, that may not be willful unemployment. If the parent stays at home because of a personal preference and the amount of income they could be earning would more than offset the cost of employment, that may be willful unemployment.

**(14) When do you use the median gross income figures?**

The median gross income figures [annual gross income of thirty-six thousand three hundred sixty-nine dollars (\$36,369) for male parents and twenty-six thousand nine hundred eighty-nine dollars (\$26,989) for female parents which is based on 2004 U.S. Census data] are only used when there is no reliable evidence of income available. The median gross income figures are not used if there is adequate evidence of a parent's ability to earn, an earnings history, or some other reliable evidence from which a tribunal can determine parent's earnings.

**(15) What are some of the biggest differences between the Income Shares Guidelines implemented January 18, 2005 and the amended Guidelines effective June 26, 2006?**

One of the biggest differences is the way the Parenting Time Adjustment is applied. See FAQ # 7. Other differences include updating the imputed income and poverty level figures, changing the definition of “day” from a calendar day to a twenty-four (24) hour period, revising the language of the social security and imputed income sections to clarify them, revising the credits for qualified other children, and changing the worksheets to accommodate two parents and a non-parent caretaker.

**(16) What sort of information do I need to use Income Shares?**

For the case that is being considered for establishment of an order initially or for modification of an existing order:	
General:	
1. Number of children supported in this case	
2. Name and date of birth of each child supported in this case	
Mother:	Father:
3. Mother’s full name.	3. Father’s full name.
4. Mother’s date of birth.	4. Father’s date of birth.
5. Mother’s social security number.	5. Father’s social security number.
6. Mother’s mailing address.	6. Father’s mailing address.
7. The name of Mother’s employer.	7. The name of Father’s employer.
8. Address of Mother’s employer.	8. Address of Father’s employer.
9. Mother’s gross annual income from all sources and types of income (e.g., wages, salaries, commissions, interest, unemployment benefits, welfare payments, social security payments of any kind, etc.	9. Father’s gross annual income from all sources and types of income (e.g., wages, salaries, commissions, interest, unemployment benefits, welfare payments, social security payments of any kind, etc.
Parenting Time Adjustment:	
10. Number of days the child spends with Mother annually.	10. Number of days the child spends with Father annually.
Additional Expenses	
11. Monthly cost of work-related child care	11. Monthly cost of work-related child care
12. Monthly cost of health insurance premium for children to be supported in this case	12. Monthly cost of health insurance premium for children to be supported in this case
13. Monthly amount of recurring uninsured medical expenses for children to be supported in this case	13. Monthly amount of recurring uninsured medical expenses for children to be supported in this case

Credits Against Income:	
14. Proof of payment of child support for qualified other children living with this parent less than 50% of the time (payments on back support owed do not count).	14. Proof of payment of child support for qualified other children living with this parent less than 50% of the time (payments on back support owed do not count).
15. Self-employment tax and proof of payment	15. Self-employment tax and proof of payment
16. Names and dates of birth of Mother's qualified other children living in her home 50% or more of the time.	16. Names and dates of birth of Father's qualified other children living in his home 50% or more of the time.
17. Names and dates of birth of Mother's qualified other children living less than 50% of the time in her home and proof of support.	17. Names and dates of birth of Father's qualified other children living less than 50% of the time in his home and proof of support.
18. Proof of legal duty to support the child for whom credit is sought.	18. Proof of legal duty to support the child for whom credit is sought.
Deviations: (List is not exhaustive)	
19. Proof for Deviations:	19. Proof for Deviations:
For Low Income—Evidence of income (adjusted gross income must be \$9,645 or less per yr.);	For Low Income—Evidence of income (adjusted gross income must be \$9,645 or less per yr.);
For Hardship—Evidence demonstrating that a reduction or increase in the amount of support resulting from a modification of an order will result in a hardship to the parent.	For Hardship— Evidence demonstrating that a reduction or increase in the amount of support resulting from a modification of an order will result in a hardship to the parent.
For Extraordinary Educational Expenses—	For Extraordinary Educational Expenses—
Evidence of the cost of the private or special needs education, the need of the child to have the education, and the prior educational decisions of the parents.	Evidence of the cost of the private or special needs education, the need of the child to have the education, and the prior educational decisions of the parents.
For Special Expenses—Evidence of the cost of the special expense (music/art lessons, special travel, athletic training costs, school band, etc.) and reasons justifying the expense.	For Special Expenses—Evidence of the cost of the special expense (music/art lessons, special travel, athletic training costs, school band, etc.) and reasons justifying the expense.
Serious Impairment of the Ability to Care for Children if the Order is Reduced—Evidence that a reduction in support will seriously impact the ability to provide minimally	Serious Impairment of the Ability to Care for Children if the Order is Reduced—Evidence that a reduction in support will seriously impact the ability to provide minimally

adequate housing, food and clothing for the children.

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Documents which may assist in providing proof: (List is not exhaustive)

Child Support payment history from the court clerk or from the Department of Human Services' Child Support Office or its Internet site; copy of signed court-issued child support order(s); signed voluntary acknowledgement of paternity; child's birth certificate; school records; utility records; tax records; money receipts and/or canceled checks of child support or of monetary payments provided for the care of children; proof of insurance payment; proof of work-related childcare payments; proof of uninsured medical expenses; wage statements/pay stubs; proof of unemployment compensation or workers compensation payments; and social security earnings record.